

## Message Text

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61

ORIGIN L-03

INFO OCT-01 EUR-25 ADP-00 SCA-01 CPR-02 SCS-03 INR-10

RSC-01 INRE-00 ( ADP ) R

DRAFTED BY L/ M/ SCA: H. F. SHAMWELL, JR.

20768 4/6/73

APPROVED BY L/ M/ SCA; K. E. MALMBORG

EUR/ EE - MR. HURWITZ

SCA - MISS HARPER

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P 062331 Z APR 73

FM SECSTATE WASHDC

TO AMEMBASSY PRAGUE PRIORITY

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E. O. 11652 NA

TAGS: CGEN: PFOR, CS

SUBJECT: CONSULAR CONVENTION

REFS: ( A ) PRAGUE 686; ( B ) PRAGUE 541; ( C ) STATE 59230;  
PREVIOUS

1. RE PARA 3 REF A, DEPARTMENT COULD LIVE WITH INCLUSION OF LIMITATION ON ENJOYMENT PRIVILEGES AND IMMUNITIES IN INDIVIDUAL ARTICLES, AS OPPOSED TO SEPARATE GENERAL ARTICLE, ALTHOUGH LATTER REMAINS PREFERABLE; HOWEVER, IF THIS APPROACH IS UTILIZED CAREFUL EXAMINATION MUST BE MADE OF EACH ARTICLE RELATING TO PRIVILEGES AND IMMUNITIES IN ORDER TO DETERMINE WHETHER LIMITATION APPROPRIATE. FOR EXAMPLE, UNDER ARTICLE 20 ( IMMIGRATION REQUIREMENTS), FOLLOWING LANGUAGE SHOULD BE ADDED, " PROVIDED IN EACH CASE THAT THE PERSON CONCERNED IS NOT A PERMANENT RESIDENT OF THE RECEIVING STATE."

2. DEPARTMENT CONCURS WITH EMBASSY'S OPINION THAT PARA 15, REFTL ( B ) FORMULATION ON WAIVER OF IMMUNITIES -

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REGARDING ARTICLE 34 IS SATISFACTORY, EXCEPT THAT " ACTING AS CONSULAR OFFICER" SHOULD BE REPLACED BY " PERFORMING CONSULAR FUNCTIONS."

3. RE PARA 5 REF ( A), DEPARTMENT'S ANSWER TO QUESTION CONTAINED SUBPARA ( A) IS YES. RE SUBPARA ( B), ADDITION OF " ONLY" TO ARTICLE 5 IS ACCEPTABLE; HOWEVER, DEPARTMENT PREFERS FOLLOWING EXPRESSION THIS LANGUAGE: " ONLY A NATIONAL OF SENDING STATE SHALL BE A CONSULAR OFFICER." THIS FORMULATION INTENDED TO AVOID ANY PROBLEMS RE DUAL NATIONALS. ANSWER TO QUESTION RAISED SUBPARA C IS YES. RE SUBPARA D ANSWER IS YES, BUT REFERENCE SHOULD BE TO ARTICLE 14 ( INVOLABILITY OF CONSULAR PREMISES). RE SUBPARA E, REF ( A), DEPARTMENT IS NOT AWARE OF ANY PROVISION FEDERAL OR STATE LAWS WHICH WOULD NULLIFY ESTATES FUNCTIONS AUTHORIZED ARTICLE 34. THERE MAY BE PROVISIONS VARIOUS STATE LAWS REQUIRING CONSULAR OFFICERS SATISFY CERTAIN CONDITIONS IN ORDER PERFORM ESTATES FUNCTIONS OR COURTS MAY ATTACH CONDITIONS TO TURNING OVER OF MONEY OR PROPERTY WHICH FOREIGN CONSULAR OFFICER MAY BE UNABLE TO SATISFY. HOWEVER, DEPARTMENT IS OF VIEW THAT SUCH PROVISIONS WOULD NOT CONSTITUTE NULLIFICATION CONSULAR FUNCTIONS PROVIDED IN CONVENTION. RE SUBPARA F, PARA 7 OF ARTICLE 34 IS ACCEPTABLE. RE SUBPARA C, DEPARTMENT TAKES VIEW THAT VALIDITY OF MARRIAGE PERFORMED BY FOREIGN CONSULAR OFFICER IN THE US DEPENDS UPON COMPLIANCE WITH LAWS AND REGULATIONS OF RECEIVING STATE. SUCH MARRIAGE MAY BE VALID UNDER LAW OF SENDING STATE, BUT WILL NOT BE RECOGNIZED AS VALID IN THE US UNLESS PERFORMED IN ACCORDANCE WITH THE APPLICABLE LAWS AND REGULATIONS OF THE APPROPRIATE JURISDICTION. FOR EXAMPLE, IF TWO CZECH CITIZENS ARE MARRIED BY A CZECH CONSULAR OFFICER IN NEW YORK, THAT MARRIAGE WILL NOT BE RECOGNIZED AS VALID IN THE STATE OF NEW YORK UNLESS IT MEETS THE STATE REQUIREMENTS FOR THE PERFORMANCE OF MARRIAGES IN THAT STATE. DEPARTMENT IS NOT AWARE, HOWEVER, OF ANY STATE LAWS WHICH SPECIFICALLY AUTHORIZE A FOREIGN CONSULAR OFFICER TO PERFORM A MARRIAGE IF HE IS NOT OTHERWISE QUALIFIED.

4. APRIL 13 DATE FOR ARRIVAL OF DEPARTMENT LEGAL EXPERT IS SATISFACTORY. DEPARTMENT HAS DESIGNATED MR. HORACE SHAMWELL OF THE OFFICE OF THE LEGAL ADVISER ( L/ M) AS  
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REPRESENTATIVE FOR THIS PURPOSE- TRAVEL PLANS WILL BE  
COMMUNICATED VIA SEPTTEL. ROGERS

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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* LIMITED OFFICIAL USE

## Message Attributes

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**TAGS:** CGEN, PFOR, CS, CGEN  
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